

## **REMARKS/ARGUMENTS**

The Examiner is thanked for the courtesy of a telephone interview on January 3<sup>rd</sup>, 2009, during which the amendments presently set forth and Applicant's reasoning as to why the amended claims clearly distinguish over the references cited by the Examiner were discussed. Applicant respectfully submits that the substance of the interview is set forth in the following remarks.

As discussed in the interview, Applicant has amended independent claims 1, 9, and 17 to further clarify embodiments of the invention and to further distinguish them over the prior art cited in the previous Final Office Action.

Reconsideration in light of the amendments, the interview, and the remarks made herein, is respectfully requested.

### ***Claim Objections***

The Examiner objects to claim 8 because the word "icons" was underlined, but no amendments were made to the claim.

Applicant has corrected this informality and requests that the Examiner withdraw this ground for objection.

### ***Rejection Under 35 U.S.C. § 103***

Claims 1-3, 5-7, 9-11, 13-15, 17-19, 21-23 stand rejected under 35 U.S.C. § 103(a) as being allegedly obvious over U.S. Patent No. 5,867,226 issued to Wehmeyer et al. (hereinafter Wehmeyer) in view of U.S. Patent No. 6,522,342 issued to Gagnon et al. (hereinafter Gagnon) and U.S. Patent No. 6,564,379 issued to Knudson et al (hereinafter Knudson) .

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In KSR International Co. vs. Teleflex, Inc., 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that “[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” The Court further required that an explicit analysis for this reason must be made. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 127 S.Ct. at 1741, quoting In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006).

Applicant respectfully submits that even if Wehmeyer, Gagnon, and Knudson were properly combinable, their combination would not teach or suggest the limitations of Applicant’s amended independent claims 1, 9, and 17. Further, Applicant respectfully submits that there is no suggestion or motivation to combine Wehmeyer, Gagnon, and Knudson, except for impermissible hindsight reconstruction, which is not permissible.

To begin with, Wehmeyer is merely cited because it discloses a set-top box and a program guide. As acknowledged by the Examiner, Wehmeyer does not even disclose icons as channels identifiers or the remainder of Applicant’s claim limitations related to channel icons and the use of pop-ups (Final Office Action, page 5).

Further, as will be described in more detail below, neither Wehmeyer, Gagnon, or Knudson, alone or in combination, teach or suggest Applicant’s amended claim limitations related to: displaying *an arrangement of a plurality of different channel icons associated with respective video program providers in a plurality of rows and columns simultaneously* on the display device...the different channel icons representing at least one of broadcast channels and satellite channels ...selecting one of the plurality of different *channel icons* in response to the first input...*displaying a pop-up for the selected channel icon* on the display device while still

displaying the arrangement of the plurality of different channel icons, *the pop-up overlaying at least one other channel icon*...wherein: the pop-up displays the first program data associated with the first program of the selected channel icon in response to the first input and the user interface receives the second input while the pop-up is displaying the first program data; and the pop-up displays the second program data associated with the second program of the selected channel icon in response to the second input selecting a selectable button within the pop-up while the arrangement of the plurality of different channel icons in the plurality of rows and columns is still displayed and the pop-up continues to overlay the at least one other channel icon, as recited in amended independent claims 1, 9, and 17.

The Examiner alleges that Gagnon teaches the use of icons as identifiers, citing Figures 5 and 7 of Gagnon. Applicant respectfully disagrees with the Examiner. Applicant respectfully submits that Gagnon does not teach or suggest channels icons or different channel icons representing at least one of broadcast channels and satellite channels, as set forth in amended independent claims 1, 9, and 17.

Gagnon merely discloses a Best-of-Web data service page (Gagnon, col. 6, lines 35-42; Figures 5 and 7, emphasis added). Figures 5 and 7 are examples of the Add Selections sub-page 208 and the My Selections sub-page 206 displays, respectively. The special links segment 186 contains a plurality of graphics or logos that represent topical or otherwise noteworthy websites that are mandatory download websites. Mandatory download websites are regularly/periodically downloaded and stored in the local memory of the user's PC 128 (Gagnon, col. 13, lines 32-41, emphasis added).

Thus, Figures 5 and 7, and the associated description in Gagnon, only relate to the display of graphics or logo's for selection by a user to access an associated web-site on a personal computer.

In contrast, independent claims 1, 9, and 17 generally recite that *the plurality of different channel icons are associated with respective video program providers*. In particular, amended independent claims 1, 9, and 17 recite that *the different channel icons represent broadcast channels and satellite channels*.

Because website logos 224 of Gagnon represents a website (Gagnon, col. 13, line 65). Gagnon in no way teach or suggests a channel icon associated with a video program provider.

As to Knudson, Knudson merely discloses a user operating the program guide in either a browse mode or flip mode by using the cursor keys for browse mode and channel up and down keys for flip mode (Knudson, col. 7, lines 4-7, Figures 4 and 5). As illustrated in Figures 4 and 5 of Knudson, the browse display 70 contains the program listing information for the current channel and time and if the user presses a cursor key, the program listings information in the browse display 70 is changed (Knudson, col. 6, lines 33-40). The browse display 70 is not equivalent to a channel icon.

Neither Gagnon or Knudson, alone or in combination, teach or suggest: a pop-up that displays first program data associated with a first program of a selected channel icon in response to a first input and a user interface that receives a second input while the pop-up is displaying the first program data. . .and the pop-up then displays second program data associated with a second program of the selected channel icon in response to the second input selecting a selectable button within the pop-up while the arrangement of the plurality of different channel icons in the plurality of rows and columns is still displayed and the pop-up continues to overlay the at least one other channel icon. In fact, there is not even a teaching or suggestion of *displaying a pop-up for a selected channel icon that overlays at least one other channel icon*.

As discussed above, the combination of Wehmeyer, Gagnon, and Knudson does not teach or suggest the limitations of amended independent claims 1, 9, and 17. Further, the proposed combination of Wehmeyer, in view of Gagnon, and even in further in view of Knudson is improper because there is no rationale set forth for such a combination except for hindsight reconstruction of Applicant's claims, which is improper.

Therefore, Applicant respectfully submits that amended independent claims 1, 9, and 17 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. §103(a) be withdrawn and that independent claims 1, 9, and 17, and their respective dependent claims, be allowed and passed to issuance.


*Conclusion*

In view of the remarks made above, it is respectfully submitted that pending claims 1-6, 8-22, and 24 are allowable over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date. The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application. To the extent necessary, a petition for an extension of time under 37 C.F.R. is hereby made. Please charge any shortage in fees in connection with the filing of this paper, including extension of time fees, to Deposit Account 02-2666 and please credit any excess fees to such account.

Respectfully submitted,

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Dated: 2/5/2009

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